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Law and the Agonistic Contest

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Over the past few decades, different approaches to “agonism” have received much attention in political theory. Less so in legal studies even though agonism’s central concern for democracy is vital in law, as well. The only explicit engagement seems to be a collection edited by Andrew Schaap (Ashgate, 2009). The scarcity of engagements in law is, perhaps, all the more surprising because Carl Schmitt, jurist, constitutional theorist, and controversial critic of liberalism, is considered one of the main protagonists in political agonism. But whereas Schmitt’s antagonistic understanding of conflict in the political revolved around an “existential threat” posed by a designated enemy and the real possibility of extinction, agonism focuses on the more tempered contest between political adversaries and the political necessity of conflict. It is a critique of deliberative and consensual notions of politics, and as such it seems to underlie the work of numerous contemporary critics of neoliberalism such as Agamben, Lefort, and Rancière. Agonism allows us to look at law as not only a pacifier of social conflicts, but also as a regulated political space in which contesting views and interests are played out.

Friedrich Nietzsche, “Homer’s contest” (in *On the Genealogy of Morality*, Cambridge University Press, 2017). Nietzsche’s essay from 1872 is usually classified as one of his “early writings.” It was published immediately after *The Birth of Tragedy* (1872) and seemingly intended as the introduction to a new book. The essay is the mother of all things agonistic. Here Nietzsche, young professor at Basel, is still reading his Greek texts with the pedantry of a classical philologist. And yet, at the same time, he manages to extract from his sources a dark pre-Homeric world, the tensions of which are played out in the agonistic contest. Nietzsche warns us that, because of our modern sensibilities, we are too captivated by the elegance of the regulated contest itself. If we wish to understand the Greeks, we need to refocus our attention on the dark forces that the contest is meant to regulate. And, as Nietzsche says, the contest is not a safety valve for discharging tensions. It is a stimulant that allows the winner to withdraw and ever new contestants to enter the agon.

Christa Davis Acampora, *Contesting Nietzsche* (University of Chicago Press, 2013). Unlike most readings of Nietzsche, Acampora’s elegant book focuses on “Homer’s contest” as part of the larger unfinished project mentioned above rather than as an isolated fragment with only marginal scholarly value. Through detailed close readings, she illustrates how the agon informs the development of Nietzsche’s philosophy from the “early writings” to the later concept of will to power. The essential aspect of the contest

is not the annihilation of a contestant as a form of individual agency but, as Acampora shows, the production of social meaning and value in a regulated struggle. And in so far as it is meaningful, the struggle regulated in the contest becomes affirmable for human existence. In Acampora's account, the agon is a central theme for both Nietzsche's critique and his vision, and Acampora traces this theme through his engagements with Homer, Socrates, Paul, and Wagner. Moreover, the agon also represents the template for Nietzsche's own philosophizing and his confrontation with the tradition.

Bonnie Honig, *Antigone, Interrupted* (Cambridge University Press, 2013). Honig is, no doubt, one of the central contemporary figures of the political theory of agonism, and her *Political Theory and the Displacement of Politics* (Cornell, 1993) is an agonistic milestone. Her latest book is a complex and multifaceted reading and interpretation of Sophocles' tragedy bringing it masterfully together with "conspirators" such as Arendt, Derrida, and Butler. The main theme of the book is the politics of lament and mourning, but in the context of this "bookshelf," its opening chapter is central. In it Honig shows how *Antigone* represents a contemporary variant of humanism that focuses on vulnerability and suffering as what is common to human being (e.g. Antigone as the heroic victim of Creon's might). Honig's criticism is that such a "mortalist" notion of humanism is both disempowering and politically incapacitating. No stranger to Nietzsche herself, Honig then proceeds to show how the tragedy can also be read in the light of a life-affirming and almost vitalistic "agonistic humanism" (e.g. Antigone's contempt for her sister Ismene's cowardice). With this starting point in mind, Honig addresses her main theme in the subsequent chapters.

Chantal Mouffe, *Agonistics: Thinking the World Politically* (Verso, 2013). Mouffe's entry into the agon is quite different. Her theoretical pedigree is from the post-Marxist notion of radical democracy that she developed together with her co-author Ernesto Laclau in *Hegemony and Socialist Strategy* (Verso, 1985). And from there she has refined and expanded the theory into her own brand of "agonistic pluralism" which draws heavily on Schmitt. Instead of dwelling on the usual platitudes about the political escapades of the "Crown Jurist," Mouffe transformed her Schmittian premises into a leftist critique of neoliberalism in which the passion of and for politics is central. In this book, Mouffe discusses her theoretical differences with, e.g., Honig, but she also puts her theory to work by examining specific topical issues such as globalization and Europe.

Andreas Höfele, *No Hamlets: German Shakespeare from Nietzsche to Carl Schmitt* (Oxford University Press, 2016). As an English literature professor in Munich, Höfele finds perspectives into his Shakespearean subject matter that one is less likely to stumble upon in the English-speaking world. The book investigates a politically charged interpretation of the Bard in Germany. This "radical conservative" reception that rejects the ideals of modern liberalism in favor of more authoritarian positions ties together two key figures in agonistic thinking, namely Nietzsche and Schmitt – a relationship that has received far too little scholarly attention – throwing into the mix a number of other relevant figures such as Ernst Kantorowicz. That said, Höfele's academic environment in Germany also has a downside. His treatment of, e.g., Schmitt's *Hamlet or Hecuba* (Telos Press, 2009) or Schmitt's correspondence with the German author Ernst Jünger (*Briefe 1930–1983*, Klett-Cotta, 1999) is, despite claims to the contrary, at times tendentious in exactly the way that non-Germans like Mouffe manage to steer away from.